

Davison Van Cleve PC

Attorneys at Law

TEL (503) 241-7242 • FAX (503) 241-8160 • jog@dvclaw.com
Suite 450
1750 SW Harbor Way
Portland, OR 97201

July 15, 2020

Via Electronic Filing

Public Utility Commission of Oregon
Attn: Filing Center
201 High St. SE, Suite 100
Salem OR 97301

Re: In the Matter of PORTLAND GENERAL ELECTRIC COMPANY,
Renewable Resource Automatic Adjustment Clause (Schedule 122)
Docket No. UE 370; and
In the Matter of PORTLAND GENERAL ELECTRIC COMPANY,
Renewable Resource Automatic Adjustment Clause (Schedule 122)
(BPSC Energy Storage Microgrid and ARC Energy Storage)
Docket No. UE 372 (Consolidated)

Dear Filing Center:

Please find enclosed the redacted version of the Reply Brief of the Alliance of Western Energy Consumers ("AWEC") in the above-referenced dockets.

Please note that AWEC's brief includes Protected Information that is being handled in accordance with Order No. 19-416. The confidential version of AWEC's brief has been encrypted with 7-zip software and is being transmitted electronically to the Commission and qualified persons, consistent with the Commission's Order No. 20-088.

Thank you for your assistance. If you have any questions, please do not hesitate to call.

Sincerely,

/s/ Jesse O. Gorsuch
Jesse O. Gorsuch

Enclosure

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the **Confidential Reply Brief of the Alliance of Western Energy Consumers** upon the parties shown below via electronic mail, consistent with Commission Order No. 20-088.

Dated at Portland, Oregon, this 15th day of July, 2020.

Sincerely,

/s/ Jesse O. Gorsuch

Jesse O. Gorsuch

CITIZENS' UTILITY BOARD OF OREGON

MICHAEL GOETZ
WILLIAM GEHRKE
610 SW BROADWAY STE 400
PORTLAND OR 97205
mike@oregoncub.org
will@oregoncub.org

PUC STAFF - DEPARTMENT OF JUSTICE

SOMMER MOSER
JOHANNA RIEMENSCHNEIDER
BUSINESS ACTIVITIES SECTION
1162 COURT ST NE
SALEM OR 97301
sommer.moser@doj.state.or.us
johanna.riemenshneider@doj.state.or.us

PUBLIC UTILITY COMMISSION OF OREGON

STEVE STORM
OPUC
201 HIGH ST. SE, SUITE 100
SALEM, OR 97301
steve.storm@state.or.us

PORTLAND GENERAL ELECTRIC

DOUGLAS TINGEY
PORTLAND GENERAL ELECTRIC
121 SW SALMON – 1WTC 1301
PORTLAND, OR 97204
doug.tingey@pgn.com
pge.opuc.filings@pgn.com

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UE 370, UE 372

In the Matters of)	
)	
PORTLAND GENERAL ELECTRIC)	
COMPANY,)	
)	
Renewable Resource Automatic)	
Adjustment Clause (Schedule 122))	REPLY BRIEF OF THE ALLIANCE OF
(Wheatridge Renewable Energy Farm))	WESTERN ENERGY CONSUMERS
(UE 370), and)	
)	(REDACTED)
Renewable Resource Automatic)	
Adjustment Clause (Schedule 122))	
(BPSC Energy storage Microgrid and)	
ARC Energy Storage) (UE 372))	
_____)	

I. INTRODUCTION

Pursuant to the Administrative Law Judge’s January 17, 2020 ruling in the above-referenced dockets, the Alliance of Western Energy Consumers (“AWEC”) submits this Reply Brief in response to the Opening Brief of Portland General Electric Company (“PGE” or “Company”).

All parties to these dockets have agreed to a partial stipulation that resolves most issues associated with the revenue requirement for the Wheatridge Renewable Energy Facility (“Wheatridge”). AWEC is a signatory to that stipulation and recommends that the Oregon Public Utility Commission (“Commission”) approve it. Only three issues remain contested. The first relates to PGE’s decision-making during the request for proposals (“RFP”) process that led to Wheatridge’s selection. AWEC argues that PGE did not act prudently in allowing the winning

bidder to submit a substitute bid, and that such a decision potentially deprived customers of a lower cost and lower risk resource. The second relates to whether PGE should share the risk of Wheatridge’s performance with customers to account for the fact that Wheatridge was pursued primarily to provide forecasted economic benefits to customers rather than to meet a capacity, energy, or renewable portfolio standard (“RPS”) need. AWEC has proposed a sharing mechanism using a regulatory asset that would hold a portion of Wheatridge’s revenue requirement, to be recovered later if and when the forecasted economic benefits materialize. The third contested issue is whether, and under what circumstances, PGE should monetize renewable energy certificates (“RECs”) during the first five years of Wheatridge’s operation. AWEC argues that a better approach is to bank these RECs, impute a value to them, and offset PGE’s rate base by the total value of these RECs to recognize the timing difference between when customers purchase these RECs and when they are used for customer benefit. AWEC argues each of these contested issues more fully below.

II. BACKGROUND

A. Selection of Wheatridge

Wheatridge was selected through an RFP process that was proposed in PGE’s 2016 Integrated Resource Plan (“IRP”). The primary purpose of this resource procurement was to capture economic benefits for customers. In its IRP, PGE proposed to acquire a new RPS resource of approximately 175 average megawatts (“aMW”), stating that “early action, which captures relatively more of the available [production tax credit (“PTC”)] prior to phase-out, is preferable to deferring action.”^{1/} The Commission initially declined to acknowledge PGE’s

^{1/} Docket No. LC 66, PGE IRP at 308.

action plan item to acquire a new RPS resource, finding that “[w]ithout a clear demonstration of how the projected long-term economic benefits were balanced with short-term impacts and long-term risks, we are unable to conclude that acting now . . . to take advantage of the economic opportunity is a least-cost and least-risk approach to meeting PGE’s RPS need.”^{2/}

In response, PGE prepared a Revised Renewable Action Plan in which it reduced the target procurement size from 175 aMW to 100 aMW and implemented a “cost-containment screen that requires any added resource to be cost-effective under Reference Case conditions considering only the resource’s forecasted energy and capacity values.”^{3/} The purpose of the resource procurement, however, did not materially change. As PGE stated in its Revised Renewable Action Plan, “[t]hrough the 2016 IRP analysis, near-term renewable additions have been shown to lower the present value of PGE’s revenue requirement by allowing for lower cost RPS compliance outcomes.”^{4/} In addition, while PGE stated that a near-term RPS resource acquisition would “contribute to meeting PGE’s energy and capacity needs by 2021,” it never asserted that filling this need was the purpose of the resource selection, nor that an RPS resource represented the least-cost, least-risk resource to fill a capacity or energy need.^{5/}

Following Commission acknowledgment of the Revised Renewable Action Plan, PGE issued an RFP to the market. This RFP sought exclusively Oregon RPS-eligible resources – it did not seek any alternative resources that could compete with RPS resources to fill the Company’s capacity and energy needs.^{6/} Additionally, PGE stated in the RFP that it had

^{2/} Docket No. LC 66, Order No. 17-386 at 15 (Oct. 9, 2017).

^{3/} Docket No. LC 66, PGE 2016 IRP Addendum at 11-12 (Nov. 9, 2017).

^{4/} Id.

^{5/} Id. at 11.

^{6/} Exh. AWEC/302 at 15.

“expedited the RFP to enable capture of federal renewable tax credits including the PTC and [Investment Tax Credit (“ITC”)].”^{7/}

Three bids reached the final RFP shortlist – Wheatridge, [REDACTED], [REDACTED], with several bid variants for each project. The Independent Evaluator (“IE”) identified a “clear preference when it comes to project selection” from the final shortlist.^{8/} “Specifically, [REDACTED] [REDACTED].”^{9/} The IE went on to state that it expected PGE “to adhere to this preference in pursuing agreements and have a *clear explanation* if their final portfolio does not reflect this ranking.”^{10/} The Commissioners echoed this sentiment at the public meeting to acknowledge the final shortlist. Commissioner Tawney stated that: “It’s crucial to getting the best deal for ratepayers that we can in this very particular market.”^{11/} Chair Decker noted that: “The IE was fairly clear in its view about the ranking of projects and I expect that to be an important reference point.”^{12/}

Three days after this meeting, on December 7, 2018, [REDACTED] sent a letter to PGE [REDACTED]

^{7/} Id.
^{8/} Exh. AWEC/104 at 6.
^{9/} Id.
^{10/} Id. (emphasis added). [REDACTED]
^{11/} Dec. 4, 2018 Public Meeting, PM Continuation at 1:41.
^{12/} Id. at 3:17.
^{13/} Exh. AWEC/102 at 9.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].^{15/} PGE did not disclose this development to the Commission, which issued its written order acknowledging the final shortlist on December 19, 2018. PGE also provided none of this information in its Opening Testimony, despite the IE’s statement that the Company should provide a “clear explanation if their final portfolio does not reflect [the final shortlist] ranking.”^{16/} The Company’s testimony, for instance, does not acknowledge that Wheatridge was the lowest ranked resource on the final shortlist and offers no information as to why this resource was selected over the higher ranked projects. The reason, of course, is because the competing projects were disqualified after the shortlist had been developed (and in the case of [REDACTED] acknowledged), leaving Wheatridge as the only remaining resource.

B. AWEC’s Regulatory Asset Proposal

For the reasons discussed in the next section of this Reply Brief, AWEC recommends that the Commission require PGE to create a regulatory asset to hold a portion of Wheatridge’s revenue requirement for potential later recovery. The basis for this proposal is to create a mechanism that shares the risk of the realization of future economic benefits between customers and shareholders, while still giving PGE the opportunity to fully recover the costs of Wheatridge. Staff and CUB share AWEC’s position that PGE should share a portion of the risk

^{14/} Id.
^{15/} Id. at 13-14.
^{16/} Exh. AWEC/104 at 6.

that customer benefits from Wheatridge are realized, though they propose alternative mechanisms to achieve this.^{17/} Nevertheless, Staff supports AWEC’s regulatory asset proposal as an alternative to its primary recommendations.^{18/} CUB “is intrigued by [AWEC’s] proposal as a means to capture customer benefits and would be interested in hearing the Commission’s guidance on AWEC’s proposal.”^{19/} AWEC’s regulatory asset proposal was outlined in the Opening and Rebuttal Testimony of Bradley G. Mullins, and AWEC provides further description of how this proposal would work in this section of this Reply Brief.

AWEC’s regulatory asset proposal looks at the net revenue requirement assumed for Wheatridge when PGE modeled it in the cost-containment screen and compares that amount with the net revenue requirement proposed to be included in rates.^{20/} By “net revenue requirement,” AWEC means the full revenue requirement of Wheatridge (both owned and PPA portions), offset by net power cost and PTC benefits. Any amount proposed to be included in rates that is higher than what was modeled in the cost-containment screen would be placed into a regulatory asset.^{21/} If Wheatridge provides net economic benefits equal to or greater than those projected in the cost-containment screen, then PGE would be able to recover the costs held in the regulatory asset by offsetting them with the benefits.^{22/} An illustration of how this would work is provided below. Preliminarily, however, in its Surrebuttal Testimony PGE identified an error in

^{17/} Staff/400, Storm/16:3-6; CUB/200, Gehrke/4:5-8. Staff’s primary recommendation is that PGE use the higher of [REDACTED] and the capacity factor PGE has previously used in this proceeding for ratemaking associated with the PGE-owned portion of Wheatridge for the first ten years. Staff/400, Storm/18:14-21. CUB’s primary recommendation is that PGE forecast the owned portion of Wheatridge’s energy output using a 50% blend of a five-year rolling average and the P50 forecast for the first ten years. CUB/200, Gehrke/9:2-4.

^{18/} Staff/400, Storm/3:18-20.

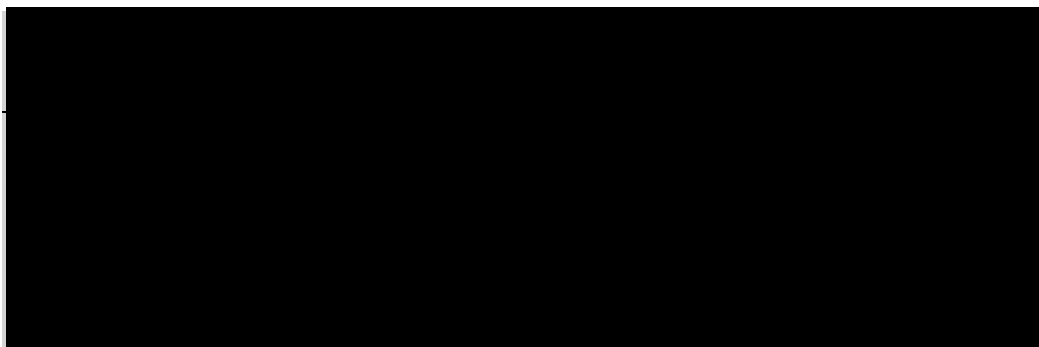
^{19/} CUB/200, Gehrke/5:2-5.

^{20/} AWEC/200, Mullins/7:14-18.

^{21/} Id. at 7:21-23.

^{22/} Id. at 7:23-8:2.

AWEC's calculation of the 2021 net revenue requirement for Wheatridge from the cost-containment screen.^{23/} AWEC included the net benefits of the solar and battery portions of Wheatridge in the 2021 net revenue requirement, even though these portions of the project were not modeled to come online until 2022.^{24/} AWEC's agrees with PGE on this point and has updated the net revenue requirement used for the cost-containment screen in the table below accordingly, which was taken from Confidential Exhibit AWEC/202.



The table above shows that Wheatridge was projected to be a [REDACTED] [REDACTED] in its first year of operation. This [REDACTED] [REDACTED]. In response to AWEC Data Request 031, included in the record as Confidential Exhibit AWEC/301, PGE provided a forecast of the actual net revenue requirement of Wheatridge for 2021, which is \$20,520,000.^{25/} This includes the impact of the Partial Stipulation filed in this docket, if the Commission approves it. It is important to note, however, that this number still represents a forecast and will not be finalized until PGE fixes its power costs for 2021 in its final power cost update in mid-November in Docket UE 377.

^{23/} PGE/600, Armstron-Batzler/19:3-8.

^{24/} Id.; see also, Exh. AWEC/202.

^{25/} Exh. AWEC/301 at 6 (row 1). Although this Exhibit is marked Confidential, AWEC has confirmed with PGE that the total revenue requirement numbers are not confidential.

Nevertheless, using this number for illustration purposes, the 2021 net revenue requirement for Wheatridge is \$ [REDACTED] higher than assumed in the cost-containment screen (\$20,520,000 - \$ [REDACTED] = \$ [REDACTED]). That amount would not be included in customer rates in 2021 and would instead be held in a regulatory asset. Next assume that the net revenue requirement in 2022 through 2024 exactly matches the forecast in the cost-containment screen. (If the net revenue requirement in these years is actually higher, then the amount in the regulatory asset would grow; if it is lower, the amount would shrink, though it would never be allowed to go negative – in that instance PGE is fully recovering its costs of Wheatridge and the incremental benefits are flowing through to customers, as intended.) In 2025, this would leave \$ [REDACTED]^{26/} to be recovered from the \$ [REDACTED] in net benefits projected to be realized in that year under cost containment screen. If that level of benefits materializes in 2025, then the remaining amount – \$ [REDACTED] – would be carried over in the regulatory asset to the next year to be recovered from incremental benefits in that year. If higher net benefits are realized in 2025, then more of the regulatory asset is paid off. If lower benefits are realized, however, then the difference is disallowed. Thus, if in 2025 the net benefits are only \$1 million, then \$ [REDACTED] of the \$ [REDACTED] held in the regulatory asset would be disallowed from recovery from customers, which represents the difference between the projected net benefits in 2025 in the cost-containment screen and the actual benefits realized. If Wheatridge proves still to be a net cost to customers in 2025, then that net cost is added to the regulatory asset, minus a disallowance of \$ [REDACTED], as the projected benefits were not realized. Once the regulatory

^{26/} AWEC has not included carrying costs for simplicity purposes. AWEC's intention with its regulatory asset proposal is that PGE be provided the opportunity to fully recover its costs. If this means a carrying charge should be applied to the regulatory asset to ensure this opportunity, AWEC does not oppose that treatment.

asset is either fully recovered or disallowed, it is eliminated as a regulatory mechanism and cost recovery proceeds as it otherwise would.

Additionally, if the Commission imposes a prudence disallowance based on PGE's decision-making during the RFP process, as argued below, then that amount is excluded from the regulatory asset. Thus, AWEC proposed a prudence disallowance of \$5,440,000.^{27/} If the Commission imposes that disallowance, the net revenue requirement in the cost-containment screen would be reduced accordingly (for 2021, the net revenue requirement in the cost-containment screen would be assumed to be \$ [REDACTED] - \$5,440,000 = \$ [REDACTED]).^{28/}

III. ARGUMENT

In its testimony in this proceeding, AWEC raises two distinct arguments related to the prudence of PGE's decision to pursue Wheatridge. First, AWEC has shown that PGE did not allow the bidder offering the indisputably least-cost and least-risk resource in the RFP to provide a substitute bid when this bidder discovered [REDACTED]. The refusal to allow a substitute bid was imprudent by potentially denying customers a lower cost and lower risk resource than Wheatridge. Second, PGE's decision to pursue an RPS-eligible resource at this time was substantially based on the Company's IRP forecasts and assumptions showing that near-term action was a lower cost alternative to delaying such an acquisition closer to when PGE had a resource need. The prudence of this decision is directly dependent on PGE's forecasts of economic benefits bearing out and, therefore, AWEC has proposed a mechanism to share the risk of this forecast between customers and shareholders by holding a portion of Wheatridge's

^{27/} Exh. AWEC/103.

^{28/} AWEC/200, Mullins/8:6-10.

revenue requirement in a regulatory asset for later recovery if the promised economic benefits materialize.

A. The prudence of PGE’s decision to pursue Wheatridge is dependent on Wheatridge’s ability to provide economic benefits to customers.

1. AWEC’s regulatory asset proposal properly aligns the risk of the realization of economic benefits between customers and shareholders.

At the heart of the dispute between AWEC and PGE over the merits of AWEC’s regulatory asset proposal is the issue of whether a traditional prudence review should apply. PGE argues that AWEC’s proposal is “not consistent with the regulatory principle that prudence is determined at the time the decision is made.”^{29/} AWEC’s position is that this is beside the point in this instance.

The Commission articulated the traditional prudence standard in its final order in PacifiCorp’s 2012 general rate case:

A prudence review must determine whether the company’s actions, based on all that it knew or should have known at the time, were reasonable and prudent in light of the circumstances which then existed [T]he Commission has confirmed that prudence of an investment is measured from the point of time of the utility’s actions and decisions without the advantage of hindsight, that the standard does not require optimal results, and the review uses an objective standard of reasonableness.”^{30/}

AWEC’s proposal to create a regulatory asset to hold a portion of the Wheatridge revenue requirement subject to the realization of future benefits is based on the position that this traditional prudence standard does not cleanly apply to a resource acquisition made primarily on the promise of future cost savings. PGE’s modeling certainly forecasts net economic benefits from Wheatridge over time, but PGE does not “know” that these economic benefits will

^{29/} PGE Opening Br. at 6.

^{30/} Docket UE 246, Order No. 12-493 at 25 (Dec. 20, 2012).

materialize. Nor “should [it] have known,” because the realization of economic benefits is a future event. Only with the benefit of hindsight will we know whether the net economic benefits PGE forecasts will become a reality.

This is materially different from a traditional resource acquisition made to meet projected load obligations. While these acquisitions are based on load forecasts that may be wrong as well, PGE has a statutory duty “to furnish adequate and safe service”^{31/} Utilities must plan their system based on the best information they have when they see a need to make a resource decision, which is why the traditional prudence standard does not rely on hindsight. A change in loads relative to forecasts may render the selected resource unnecessary or uneconomic, but the utility nevertheless made a reasonable decision at the time given its statutory duty. Additionally, PGE has an obligation to ensure that its charges for service are “reasonable and just.”^{32/} With respect to a traditional resource procurement to meet load obligations, this is determined by whether the utility selected the resource with the best combination of cost and risk, again based on the information it had when it selected the resource.^{33/} Even if reality diverges from the forecast such that a different resource would have been more economic in hindsight, the utility made the objectively reasonable decision at the time and was, therefore, prudent.

A resource procured primarily on the basis that it will provide future economic benefits to customers, however, does not further the utility’s duty “to furnish adequate and safe

^{31/} ORS 757.020.

^{32/} Id.

^{33/} Docket UM 1056, Order No. 07-002 at 24 (Jan. 8, 2007) (“Consistency of resource investments with least-cost planning principles will be an additional factor that the Commission will consider in judging prudence”) (quoting Order No. 89-507 at 7).

service” – the utility already has the resources necessary to meet this obligation. Furthermore, whether the costs of this resource are “reasonable and just” is directly dependent on the forecast of economic benefits bearing out. These differences justify judging the prudence of Wheatridge in a different manner.

AWEC’s regulatory asset proposal, as described above, attempts to capture this distinction by tying prudence to the actual performance of Wheatridge and the future economic circumstances in which it operates. In this way, it shares the risk of these economic benefits materializing between customers and shareholders and explicitly ties the prudence of the full Wheatridge revenue requirement to the realization of these economic benefits.

2. PGE’s arguments against AWEC’s regulatory asset proposal ignore the important distinctions between Wheatridge and other resource investments.

Two facts are important to recognize at the outset regarding PGE’s opposition to AWEC’s regulatory asset proposal. First, under AWEC’s proposal, only the net revenue requirement that *exceeds* what PGE forecasted in the cost-containment screen is placed into the regulatory asset for later potential recovery. Thus, even though, based on the 2021 forecasted net revenue requirement, Wheatridge is less economic than it was modeled in the RFP process, AWEC’s regulatory asset proposal still allows PGE to recover these incremental costs if the economic benefits from Wheatridge materialize (and subject to any prudence disallowance associated with the RFP process as discussed in Section B of this Reply Brief). Second, other than the error AWEC made in calculating the 2021 Wheatridge revenue requirement in the cost-containment screen (which AWEC acknowledges and corrects for in the previous section of this Reply Brief), PGE has not raised any concerns with the mechanics of AWEC’s proposal. The Company, for instance, does not dispute that AWEC’s proposal would provide it with the

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opportunity to recover all of its costs for Wheatridge, nor does it claim that AWEC's proposal is unworkable from an accounting or any other perspective in any way.

Instead, PGE's opposition to AWEC's proposal is based on policy and legal arguments. PGE's primary argument against AWEC's proposal is its position that Wheatridge is not fundamentally different from any other resource selection and, therefore, a traditional prudence review should apply: "the RFP, which selected Wheatridge, is not different like parties are suggesting. PGE faced and still faces both a capacity and energy deficit, which the results of the RFP partially filled in a least cost, least risk manner ... Wheatridge was built to satisfy a need for current capacity and energy needs, and future RPS compliance needs."^{34/} There are two problems with PGE's statement here.

First, the Company's testimony notwithstanding, it cannot demonstrate that Wheatridge has filled any portion of its capacity and energy needs "in a least cost, least risk manner." PGE's RFP was expressly limited to resources eligible for Oregon's RPS.^{35/} Therefore, any energy or capacity resource that was not RPS-compliant was ineligible to compete with Wheatridge in a manner that would demonstrate that Wheatridge is a least cost, least risk energy and/or capacity resource. The fact that Wheatridge does contribute to PGE's energy and capacity needs is ancillary to the true basis for its selection.

Second, PGE's own testimony undermines its position that "Wheatridge was built to satisfy a need for current capacity and energy needs" The Company acknowledges that "the fundamental customer benefit realized by successfully conducting and executing on the 2018 Renewables RFP in the first place ... is the ability to capture the 100% PTC benefit before

^{34/} PGE/600, Armstrong-Batzler/18:2-7; see also PGE Opening Br. at 6.

^{35/} Exh. AWEC/302 at 15.

it goes away.”^{36/} PGE even bases the prudence of its decision to select Wheatridge on its projected economic benefits, testifying that not selecting Wheatridge “would have made little sense and likely been an imprudent decision, as the Wheatridge project not only passed the cost containment screens, but exhibited a strong benefit-to-cost ratio”^{37/} That is a justification that depends on the realization of future economic benefits – capturing the full PTC is a lower cost alternative for customers than delaying action. That justification changes the risk profile for customers, who are asked to pay for a resource they do not need for reliability purposes on the basis that they will be better off economically in the future. The incremental risk this places on customers is already apparent. The IRS recently issued Notice 2020-41 extending the Continuity Safe Harbor for receiving the full PTC by another year, meaning PGE could have delayed this procurement and deferred an incremental rate increase for customers by at least a year.^{38/}

As a corollary to PGE’s argument that a traditional prudence review should apply, the Company asserts that prudence has been established because it complied with all Commission processes leading up to Wheatridge’s selection: “Wheatridge is prudent because it was the least cost, least risk resource resulting from a Commission approved RFP process that came out of a Commission acknowledged IRP.”^{39/} The Company further states that it “followed the Commission prescribed process of acknowledging a need through the IRP, then seeking and getting approval for the design and issuance of an RFP.”^{40/} The Commission, however, has made clear that simply checking all of the procedural boxes is insufficient to demonstrate

^{36/} PGE/600, Armstrong-Batzler/9:13-16.

^{37/} PGE/300, Armstrong-Batzler/10:10-12.

^{38/} IRS Notice 2020-41, available at: <https://www.irs.gov/pub/irs-drop/n-20-41.pdf>.

^{39/} PGE/600, Armstrong-Batzler/6:12-13; see also PGE Opening Br. at 5.

^{40/} PGE/600, Armstrong-Batzler/15:8-10.

prudence. In its order acknowledging the Revised Renewable Action Plan, the Commission affirmed “the fundamental principle [] that, regardless of acknowledgment, any resource investment decisions ultimately rest firmly with the company.”^{41/}

Therefore, while PGE claims that “neither the Commission nor PGE implied that use of a cost containment screen guaranteed net benefits for a project at the time of the Commission’s acknowledgment of PGE’s Revised Renewable Action Plan,”^{42/} the Commission was not addressing the ratemaking treatment of Wheatridge in its IRP and RFP acknowledgment orders or how it would ultimately determine whether and under what conditions Wheatridge was determined to be prudent. It is, therefore, not surprising that, as PGE states, “nowhere in any of the Commission Orders leading up to the selection of Wheatridge ... has the Commission raised this issue or recommended this course of action be taken.”^{43/} This type of substantive ratemaking guidance is outside of the scope the IRP and RFP review.^{44/} Indeed, the Commission’s acknowledgment of the RFP shortlist in particular was primarily procedural: “We acknowledge PGE’s shortlist because it aligns with PGE’s IRP-acknowledged, revised renewable action plan, and because the RFP process met our competitive bidding guidelines and was fair and transparent.”^{45/} That decision provides no guidance at all on how rate recovery for Wheatridge should work, which the Commission appropriately left to this proceeding.

PGE also accuses AWEC, as well as Staff and CUB, of single-issue ratemaking by making proposals that “will affect PGE’s overall risk profile, with no consideration for how

^{41/} Order No. 18-044 at 6;

^{42/} PGE/600, Armstrong-Batzler/6:7-9.

^{43/} Id. at 17:3-6.

^{44/} See, e.g., Docket No. UM 1845, Order No. 18-178 at 13 (May 23, 2018) (choosing to decline to acknowledge PacifiCorp’s RFP final shortlist rather than adopt ratemaking conditions recommended by the IE).

^{45/} Docket No. UM 1934, Order No. 18-483 at 3 (Dec. 19, 2018).

PGE is compensated for incurring this greater regulatory and recovery risk.”^{46/} This is an odd argument given that it comes in the context of a single-issue rate proceeding. AWEC’s proposal is framed within the context and limits of this RAC proceeding. If PGE would prefer to forego cost recovery for Wheatridge until it files a general rate case, and then all aspects of PGE’s rates including its return can be evaluated, AWEC has no objection. In any event, it is absolutely true that AWEC’s regulatory asset proposal would impose greater risk on PGE with respect to cost recovery for Wheatridge. That is the point. AWEC’s position is that PGE is introducing new risks to its resource portfolio by pursuing resources primarily for long-term economic benefits, and the Company’s cost-recovery proposal imposes all of that incremental risk on customers. AWEC’s proposal seeks to achieve a fair, just, and reasonable outcome by equitably sharing these incremental risks between customers and shareholders. An alternative would be to *reduce* PGE’s return to reflect the shifting of risk from shareholders to customers that PGE’s proposal would accomplish. That option, however, is not available in a RAC proceeding.

Again, it is worth reemphasizing that AWEC’s regulatory asset proposal does not deny PGE the opportunity for full cost recovery of Wheatridge, even the amount that exceeds the net revenue requirement projected in the cost-containment screen. It simply ties that cost recovery to Wheatridge’s economic performance. Moreover, AWEC is not proposing that PGE would pay more than is available in the regulatory asset. Customers still bear the risks of Wheatridge’s economic performance to the extent they are incremental to what is available in the regulatory asset and to the extent they exist after the regulatory asset is extinguished.

Additionally, to the extent the PTC is again extended or reauthorized, or other future events

^{46/} PGE/600, Armstrong-Batzler/10:1-7.
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occur that demonstrate the value of deferring action over a near-term acquisition, customers will continue to bear that risk.

PGE further argues that it is providing incremental benefits to customers through its proposal to monetize Wheatridge’s RECs in the first five years.^{47/} AWEC addresses PGE’s REC monetization proposal more fully below, but for now it is enough to note that this proposal has nothing to do with an equitable allocation of the risk of performance from Wheatridge. Regardless of the merits of PGE’s REC monetization proposal, the basis for it is to maximize the value of customer-owned property (i.e., the RECs). That should be standard operating procedure for any utility.

Finally, PGE argues that AWEC’s regulatory asset proposal “may not be consistent with [ORS] 469A.210(2)(a),” which allows for “timely recovery of costs prudently incurred by an electric company to construct or otherwise acquire facilities that generate electricity from renewable energy sources.” There are two problems with this argument. First, AWEC’s proposal is based on the position that the net revenue requirement for Wheatridge above what was assumed in the cost-containment screen is not “prudently incurred” until the economic benefits forecasted in the cost-containment screen are realized. Once they are, recovery is allowed and, therefore, “timely recovery” is assured. Second, even if the Commission concluded that “timely recovery” relates to the time when Wheatridge is placed into service, AWEC’s regulatory asset proposal is not substantively different from a deferral. Prior to the Commission’s initial final order in UM 1909,^{48/} that is how PGE’s and PacifiCorp’s RACs

^{47/} PGE/600, Armstrong-Batzler/20:3-6.

^{48/} Docket No. UM 1909, Order No. 18-423 (Oct. 29, 2018).

operated, and they may again following the modified final order in that proceeding.^{49/} In UE 288, for instance, PGE deferred the revenue requirement for its Tucannon River Wind resource until RAC rates were put into effect, after Tucannon’s online date.^{50/} If PGE did not believe this treatment denied it “timely recovery of costs,” then a regulatory asset should be no different.^{51/}

B. PGE should have allowed the winning bidder to submit a substitute bid.

There is no dispute that [REDACTED] bid was the highest ranked bid on the RFP shortlist. That was the conclusion of the IE, PGE, and the Commission.^{52/} PGE has an obligation to acquire the least-cost, least-risk resource for its customers. When [REDACTED], therefore, PGE should have allowed the bidder to submit a substitute bid. The failure even to receive this information from [REDACTED] so that it could be compared to the other bids on the shortlist was imprudent and potentially denied customers a lower cost and lower risk resource than Wheatridge.

Because PGE’s refusal to receive substitute information has denied parties and the Commission an opportunity to compare the value of a substitute bid relative to Wheatridge, AWEC proposes a prudence disallowance equal to 50% of the cost difference between the [REDACTED] and Wheatridge. The adjustment is applied on

^{49/} PGE Schedule 122, Sheet No. 122-2; Docket No. UM 1909, Order No. 20-147 (Apr. 30, 2020).

^{50/} Docket No. UE 288, Order No. 15-129 at 2 (Ap. 15, 2015).

^{51/} PGE also claims that “AWEC has been in opposition to PGE procuring any resource from the beginning of this process and is simply carrying forward their opposition” PGE/600, Armstrong-Batzler/17:6-7. This is not accurate. It is true that AWEC opposed PGE acquiring a resource during the IRP and RFP process. The Commission, however, ruled against AWEC on this issue and AWEC has accepted this decision. If AWEC were “simply carrying forward” this opposition, it would have argued that PGE’s selection of Wheatridge was wholly imprudent and should be disallowed entirely. While AWEC has raised concerns with the prudence of PGE’s actions during the resource selection process, and argues for a sharing of the risks of Wheatridge between customers and shareholders, it has never argued in this proceeding that all of Wheatridge’s costs should be disallowed or that PGE should not have procured any resource at all.

^{52/} Exh. AWEC/104 at 6; Exh. AWEC/102 at 3; Docket No. UM 1934, Order No. 18-483 (Dec. 19, 2018).

a \$/MWh basis to compensate for the different sizes of the [REDACTED] and Wheatridge projects.^{53/}

In opposition to AWEC's proposed disallowance, PGE argues that allowing [REDACTED] to submit a substitute bid "would reward bidder behavior at odds with Commission approved RFP rules, undermine future solicitations, and would have put at risk PGE's ability to secure resources prior to tax credit deadlines."^{54/} None of these arguments are persuasive.

PGE's claim that allowing a substitute bid "would reward bidder behavior at odds with Commission approved rules" is both incorrect and a red herring. In its Opening Brief, the Company reiterates that allowing a substitute bid "would have been at odds with Commission rules," but neither this brief nor PGE's testimony identifies what rule such an action would supposedly violate.^{55/} None of the Commission's Competitive Bidding Rules prohibit allowing a bidder to submit a substitute bid or anything similar.^{56/} In fact, allowing a substitute bid would have furthered the purpose of these rules, which "are intended to provide an opportunity to minimize long-term energy costs and risks"^{57/}

It appears that PGE's position is that allowing [REDACTED] to submit a substitute bid would have compromised a "fair, objective, and transparent competitive bidding process."^{58/} The Company's argument, however, depends entirely on such a waiver being precedential. PGE claims that "the cost and risk benefits of competitive solicitations cannot continue to serve customer interests if bidders are not required to submit accurate costs for which they are

^{53/} AWEC/100, Mullins/20:2-7.

^{54/} PGE/600, Armstrong-Batzler/4:9-12.

^{55/} PGE Opening Br. at 2.

^{56/} See OAR Division 860-089.

^{57/} OAR 860.089-0010(1).

^{58/} Id.

committed to deliver.”^{59/} It further states that the “value of competitive bidding is significantly eroded if at the conclusion of the process, a bidder can expect to demand an opportunity to re-bid and restart the process.”^{60/} AWEC does not necessarily disagree with these statements, but their validity depends on the establishment of a general practice allowing substitute bidding at the end of the RFP process. AWEC’s position is that *in this particular circumstance* the prudent course of action was to allow a substitute bid. Exceptions to general rules and principles exist all the time, and this case is such an exception. No party has identified any evidence of bad faith underlying [REDACTED] request to submit a substitute bid; indeed, PGE specifically testifies that it has not “suggest[ed] impropriety on the bidder’s part.”^{61/} The bidder simply made a mistake, which it was prepared to rectify, and allowing the bidder to do so could have resulted in a lower cost and lower risk resource for customers, which would have furthered the goal of “getting the best deal for ratepayers that we can in this very particular market.”^{62/} This circumstance warrants an exception to the general principle that bidders should not be allowed to update their bids at the end of the RFP process. PGE does not explain why granting an exception in this instance would have required it to institute a policy allowing substitute bidding at the end of all future RFPs and potentially reward bad behavior, or why it would be required to allow all other bidders to submit new bids.

PGE’s claim that allowing [REDACTED] to provide a substitute bid would have unduly delayed the RFP and threatened capture of the full PTC is similarly baseless. [REDACTED]

^{59/} PGE/600, Armstrong-Batzler/4:19-21.

^{60/} Id. at 5:9-11.

^{61/} Id. at 4:16-17.

^{62/} Dec. 4, 2018 Public Meeting, PM Continuation at 1:41 (Commissioner Tawney).

[REDACTED] PGE publicly announced the selection of Wheatridge.^{63/} [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

PGE also criticizes AWEC’s calculation of a prudence disallowance amount as “based on the very bid that was withdrawn.”^{66/} AWEC was forced to base its calculation on the withdrawn bid because PGE’s actions denied the Commission and parties an ability to evaluate the substitute bid [REDACTED] was prepared to offer. AWEC’s prudence disallowance begins with the premise that [REDACTED] was the top-ranked shortlist bid. [REDACTED]

[REDACTED]

[REDACTED].^{67/} AWEC selected this variant as the basis for calculating an appropriate prudence disallowance because it is the most similar to Wheatridge and because it was the one [REDACTED]. AWEC then applied a prudence disallowance based on 50% of the cost difference between [REDACTED] and Wheatridge to account for the likelihood that the substitute

bid [REDACTED]

[REDACTED]

^{63/} Exh. AWEC/102 at 9; see also, <https://www.portlandgeneral.com/our-company/news-room/news-releases/2019/02-13-2019-portland-general-electric-and-nextera-energy-resources-to-develop-en>.

^{64/} Exh. AWEC/102 at 9.

^{65/} Id.

^{66/} PGE Opening Br. at 2.

^{67/} Exh. AWEC/102 at 3.

[REDACTED]

[REDACTED]

[REDACTED]. This is a reasonable approach to calculating the value customers lost due to PGE’s actions given the absence of information as a consequence of those actions.

C. REC Monetization

AWEC’s primary goal is for PGE to maximize the value of customer property, including Wheatridge RECs and all other RECs held by the Company. To accomplish this goal, AWEC recommends in testimony that PGE attribute a market value for the Wheatridge RECs and require PGE to include that value as an offset to rate base, which will have the effect of providing customers with a return on this customer property PGE is holding for future use.^{68/} Such treatment is similar to how PGE treats accumulated deferred income taxes.^{69/} It recognizes the timing difference between when customers pay for RECs – when they are generated – and when they receive value for those RECs – when they are either sold or retired for RPS compliance.

PGE opposes AWEC’s recommendation on the basis that there is no market for RECs and that these RECs “lose a substantial amount if not all of their market value” once they are banked.^{70/} This is simply untrue, as PGE purchases RECs every year and, therefore, there is a value for RECs. Moreover, PGE itself has identified a value for the Wheatridge RECs it proposes to monetize. If it can ascribe a value to these RECs, there is no apparent reason why it

^{68/} AWEC/100, Mullins/26:9-27:3.

^{69/} Id. at 26:20-27:3.

^{70/} PGE/300, Armstrong-Batzler/35:7-10.

cannot do the same for these same RECs if it chooses to bank them rather than monetize them, or for that matter, all other RECs in its bank.

If, however, the Commission disagrees with AWEC's primary recommendation, then AWEC recommends that PGE sell the majority of banked RECs if PGE forecasts continued physical compliance with the Company's RPS needs. Because physical compliance obviates the need for a large REC bank, this option at least ensures that customers receive some residual value for their REC investments.

Regardless of what path the Commission takes going forward, it is vital that customers who have purchased what now amounts to thousands of unused RECs receive adequate compensation for this customer-owned property. Failure to provide a mechanism by which to accomplish this goal is unreasonable.

IV. CONCLUSION

For the foregoing reasons, AWEC recommends that the Commission approve AWEC's proposal to hold a portion of Wheatridge's revenue requirement in a regulatory asset to be recovered from future net benefits, if they materialize, and impose AWEC's recommended disallowance, as PGE's imprudent actions during the RFP process potentially resulted in selection of a resource that was not the least cost and least risk. Finally, AWEC recommends that the Commission impute a market value to Wheatridge RECs and apply that value as an offset to PGE's rate base until those RECs are sold or used for RPS compliance.

Dated this 15th day of July, 2020.

Respectfully submitted,

DAVISON VAN CLEVE, P.C.

/s/ Tyler C. Pepple

Tyler C. Pepple

1750 SW Harbor Way, Suite 450

Portland, Oregon 97201

(503) 241-7242 (phone)

(503) 241-8160 (facsimile)

tcp@dvclaw.com

Of Attorneys for the

Alliance of Western Energy Consumers